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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,163	07/12/2004	Walter Keller	3002	5205
7590 Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743				
10/06/2008				
EXAMINER				
AHMED, HASAN SYED				
ART UNIT		PAPER NUMBER		
1615				
MAIL DATE		DELIVERY MODE		
10/06/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/501,163

**Applicant(s)**

KELLER ET AL.

**Examiner**

HASAN S. AHMED

**Art Unit**

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4 and 12-19 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4, 12, 13, 18, and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

- Receipt is acknowledged of applicants' RCE, which was filed on 5 August 2008.
- Applicants' arguments have been considered but are moot in view of the new grounds of rejection.

\* \* \* \* \*

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on 3 July 2008 has been entered.

\* \* \* \* \*

***Election/Restrictions***

In response to applicants' request for rejoinder of claims 14-17, said claims are directed to a distinct statutory class vis-à-vis claims 4, 12, 13, 18, and 19, which are method claims. As such, the requirement is still deemed proper and is therefore made FINAL.

\* \* \* \* \*

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4, 12, 13, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2006/0088494 ("Lendlein").

Lendlein teaches a composition used for recallable hair transformation (*see abstract*) comprising:

- natural zein (*see paragraph 0021*) at a concentration of 0.1 to 15% (*see paragraph 0024*), reading on instant claim 18;
- used for restructuring (*see paragraph 0013*), reading on instant claim 18;
- the 60 minutes (1 hour) of instant claim 19 (*see paragraph 0073*);
- the noxae of instant claim 4 (*see paragraph 0013*);
- the solution of instant claim 12 (*see paragraph 0024*); and
- a temperature range of 20-40 degrees Celcius (*see paragraph 0015*), reading on instant claim 0015.

Lendlein explains that the disclosed method is beneficial for, "...providing a recallable hair transformation...enabling a high degree of recovery of a once-programmed hairdo." *See paragraph 0003.*

In the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art," as is the case between Lendlein and the instant application, a *prima facie* case of obviousness exists. In *re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); In *re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to disclose a method for improving the condition of hair with natural zein, as taught by Lendlein. One of ordinary skill in the art at the time the invention was made would have been motivated to make such a composition because it is useful in providing a recallable hair transformation, enabling a high degree of recovery of a once-programmed hairdo, as explained by Lendlein.

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***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HASAN S. AHMED whose telephone number is (571)272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. S. A./  
Examiner, Art Unit 1618

/Humera N. Sheikh/  
Primary Examiner, Art Unit 1618